

FRANKLIN DEPOSITION

COPY

1 UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA
3 -----X
4 SERENDIP LLC & WENDY CARLOS,

5 Plaintiffs,

6 -against-

7 WARNER BROS. ENTERTAINMENT INC.,
8 Defendant.

9 Case No. CV08-07739
10 -----X

11 One Time Warner Center
12 New York, New York

13 September 16, 2009
14 10:00 a.m.

15 Videotaped deposition of ANNEMARIE
16 FRANKLIN, held at the offices of Time Warner,
17 Inc., pursuant to notice, before Barbara Driscoll,
18 a Notary Public of the State of New York.

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22
23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
212-750-6434
Ref: 91146

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2 Then I worked in the insurance industry
3 for about 16 years.

4 Q. What did you do in the insurance
5 industry?

6 A. I was an actuary.

7 Q. Did you do anything else prior to law
8 school, professionally?

9 A. Well, I started Serendip.

10 Q. When did you start Serendip?

11 A. 1980.

12 Q. We will come back to that.

13 You worked for the government. You
14 were an actuary. You started Serendip in 1980.
15 Any other professional experience before law
16 school?

17 A. No.

18 Q. You went to law school in 1986 at
19 Columbia?

20 A. Yes.

21 Q. When you graduated from law school, did
22 you practice law?

23 A. After I was admitted to the bar, yes.

24 Q. When were you admitted to the bar?

25 A. January 1990, in New York.

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2 partnership.

3 Q. Who were the partners in Serendip?

4 A. Wendy Carlos and me.

5 Q. Do you also have a personal
6 relationship with Ms. Carlos?

7 A. Yes.

8 Q. When did your personal relationship
9 with Ms. Carlos begin?

10 A. 1979.

11 Q. Are you and Ms. Carlos legally married
12 in any state?

13 A. No.

14 Q. Do you still have a personal
15 relationship with Ms. Carlos?

16 A. Yes.

17 Q. What was the purpose of the Serendip
18 partnership when it was formed in 1980?

19 A. The production and promotion of Wendy
20 Carlos' music and any other projects we wanted to
21 get into.

22 Q. At some point, did the form of Serendip
23 change from a partnership to an LLC?

24 A. Yes.

25 Q. When was that?

1 FRANKLIN

2 A. The end of 1999.

3 Q. Why did you do that?

4 A. Because the law developed the LLC --
5 New York State had passed an enabling statute for
6 limited liability companies and there are certain
7 advantages to its structure.

8 Q. Other than yourself and Ms. Carlos, are
9 there any other members of Serendip?

10 A. No.

11 Q. Have there ever been any other members
12 other than yourself and Ms. Carlos?

13 A. There have not been.

14 Q. Who has the authority to enter into
15 contracts on behalf of Serendip?

16 A. I guess either partner but -- either
17 member probably under the law. I don't know. It
18 is a legal question.

19 Q. Not necessarily.

20 Where does Serendip keep its records?

21 A. At its physical location.

22 Q. That is at 830 Rock --

23 A. 830 Broadway.

24 Q. Is that also your home?

25 A. Yes.

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Q. And Ms. Carlos' home?

A. Yes.

Q. Are those records kept separate from your personal records?

MR. COHN: Objection to the form.

You can answer it if you understand it.

A. Well, I try to keep them separate, but -- you know.

Q. Do you receive compensation from Serendip?

A. No.

Q. What role do you play at Serendip?

A. I am the business member -- the LLC member manager is the designation under the tax law.

Q. What are your duties as the LLC member manager?

A. I take care of the business side.

Q. What does that mean?

A. It means that I handle anything relating to business, contracts or accounting or the banking, all the -- any typical business activity, acquisition of materials.

Q. Acquisition of what?

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2 A. For which we own the copyright.

3 Q. Is Ms. Carlos a member of a performing
4 rights society?

5 A. Yes.

6 Q. Which one?

7 A. BMI.

8 Q. Does Serendip have any employees?

9 A. No.

10 Q. Is one of your responsibilities for
11 Serendip to police the copyrights?

12 A. Yes.

13 Q. What does that entail?

14 A. Well, it involves checking various
15 sources which you find -- often find music being
16 used that hasn't been authorized.

17 Q. What are those sources?

18 A. Well various things are on line. For
19 example, e-bay, UTube, Napster and other MP 3 type
20 sites. We also get hints from people who write to
21 wendycarlos.com and tell us about uses.

22 Q. Anything else?

23 A. I can't think of anything specific.
24 There are probably others.

25 Q. Describe what your practice is with

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respect to looking at UTube; what do you do?

A. I search for uses of music by whatever means I can figure out to do.

Q. What means are those?

A. You have to search for key words.

Q. What key words do you use?

A. I search for Wendy Carlos' name. I search for names of particular pieces of music. I search for names of certain motion pictures.

Q. You mentioned wendycarlos.com. What is that?

A. It is a personal website for Wendy Carlos.

Q. Who maintains that website?

A. She does -- or Serendip does, you know. It is mainly her.

Q. About how much of your time on average do you spend policing the copyright on these various internet sites?

A. Not very much, I mean, because it is -- to search -- I do it once a week or something.

Q. Why do you do that?

A. Because I find things that are unauthorized and they are damaging -- potentially

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damaging to our rights, Serendip's rights or Wendy
Carlos' rights.

Q. How in your view are UTube clips
potentially damaging to Ms. Carlos' rights or
Serendip's rights?

A. UTube?

Q. UTube.

A. Because they are a potential use of
revenue source to someone else on the basis of
copyright which we own.

Q. You mentioned e-bay.

You're not talking about reselling of
lawfully purchased material?

A. No.

Q. What is on e-bay?

A. E-bay often finds pirate things,
unauthorized CD's. I also find use of Wendy
Carlos' name to sell someone else's work.

MS. BURROW: I will place before you
what we will mark as Exhibit 3 which is a
one-page document titled copyright assignment.

(Exhibit 3, copyright assignment,
marked for identification, as of this date.)

Q. Ms. Franklin, do you recognize

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2 Ms. Carlos' signature?

3 A. Yes, I do.

4 Q. Did you draft this document?

5 A. Yes, I did.

6 Q. When did you do that?

7 A. I don't remember exactly. A few years
8 ago.

9 Q. Because it is not dated, correct?

10 A. It is not dated.

11 Q. Was it prior to filing this lawsuit?

12 A. Yes.

13 Q. Was it prior to 2007?

14 A. Yes.

15 Q. What was the purpose of this document?

16 I am not asking for a privilege question. I am
17 asking for a business question.

18 A. It was to provide a written record of a
19 previous oral assignment.

20 Q. When was the oral assignment?

21 A. 1984, I believe the document says that.

22 Q. This purports to assign music
23 composition, arrangements and master sound
24 recordings created from 1968 through 1980 on
25 behalf of Trans-Electronic Music Productions,

1 FRANKLIN

2 consideration for her ownership in TEMPI which
3 previously owned this?

4 MR. COHN: If you know.

5 Q. If you know.

6 A. The consideration cited there was --
7 which was the Serendip assuming the obligation for
8 finishing the CBS contract was for her benefit.

9 Q. Other than the consideration cited on
10 Exhibit 3, you're not aware of any consideration
11 to Ms. Elkind or any -- consideration or payment
12 or anything of value to pay to Ms. Elkind with
13 respect to whatever ownership rights she may have
14 had in the prior owner of the copyrights that are
15 being assigned in Exhibit 3?

16 A. I am not personally aware of it.

17 Q. Is Serendip aware of any such
18 consideration?

19 A. I -- no. Personally on behalf of
20 Serendip or myself, I can't say what it was, no.

21 MS. BURROW: Exhibit 4 is an undated
22 agreement between TEMPI and Polaris
23 Productions, Inc.

24 (Exhibit 4, undated agreement between
25 TEMPI and Polaris Productions, Inc., marked

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for identification, as of this date.)

Q. Ms. Franklin, have you seen this document before?

A. Yes.

Q. If you look at the last page, you see it is signed -- there is a signature block that says agreed and accepted, Trans-Electronic Music Productions, Inc. -- there are two signatures.

A. Yes.

Q. One of those purports to be Rachel Elkind. Do you see that?

A. Yes.

Q. Do you recognize Ms. Elkind's signature?

A. I have seen it before.

Q. One purports to be Walter Carlos and that is Ms. Carlos, correct?

A. Yes.

Q. You didn't draft this agreement, correct?

A. No.

Q. When was the first time you saw this agreement?

A. Two years ago.

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2 Q. What was the occasion on which you saw
3 this agreement two years ago?

4 A. I wrote a letter to Warner Brothers.

5 MS. BURROW: Please mark this document
6 as Exhibit 5.

7 (Exhibit 5, letter dated September 24,
8 2007, marked for identification, as of this
9 date.)

10 MS. BURROW: I just marked as Exhibit
11 5, a letter on stationery that says Annemarie
12 Franklin to Alan Horn at Warner Brothers.

13 Q. Is this the letter you're referring to?

14 A. Yes.

15 Q. Prior to this letter which I believe is
16 dated September 24, 2007, based upon subsequent
17 communication, that prior to drafting this letter,
18 you had not reviewed the agreement that we just
19 marked as Exhibit 4?

20 A. I had not.

21 Q. Looking back at Exhibit 4, what was
22 your understanding of the purpose of this
23 agreement? Again, I am not asking you for a legal
24 conclusion, but --

25 A. Are we talking about Exhibit 4?

1 FRANKLIN

2 for identification, as of this date.)

3 MR. COHN: The complaint or the amended
4 complaint?

5 MS. BURROW: The amended complaint.

6 Q. Before we look at Exhibit 6, looking
7 back at Exhibit 5 which is your September 24
8 letter to Mr. Horn, if you look at the third
9 paragraph of that letter, that begins the
10 unlicensed music?

11 A. Yes.

12 Q. I will read it because it is short.

13 "The unlicensed music use in the
14 aforementioned documentaries is only the tip of
15 the iceberg in that none of the music by Wendy
16 Carlos for A Clockwork Orange appears to have been
17 licensed by Warner Brothers for home video, DVD or
18 download use."

19 Do you see that?

20 A. Yes.

21 Q. Is the basis for that statement the
22 agreement we marked as Exhibit 4?

23 A. The agreement that is marked Exhibit 4
24 is the licensing agreement for the music, so if it
25 is not in there, it is not in there.

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2 Q. Just to be clear, when you say that
3 none of the music by Wendy Carlos for Clockwork
4 Orange appears to have been licensed by Warner
5 Brothers, you're basing that on your review of
6 Exhibit 4?

7 A. Well --

8 MR. COHN: You can answer that.

9 A. The answer is yes and no.

10 Q. What do you mean by yes and no?

11 A. At the time I wrote the letter, I
12 hadn't seen the agreement.

13 Q. So you saw the agreement after you
14 wrote this letter?

15 A. Yes, that is correct.

16 Q. Did you have -- did Serendip have a
17 copy of the agreement that was marked as Exhibit 4
18 at the time you wrote this letter?

19 A. No.

20 Q. When did you acquire a copy of the
21 agreement marked as Exhibit 4?

22 A. When Keith Zajic sent it to me.

23 Q. So you got it from Mr. Zajic?

24 A. Yes.

25 Q. When you wrote the statement on Exhibit

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4, on what were you basing your belief that it was not licensed for digital or home video, DVD on?

A. Discussions with Wendy Carlos and recognizing when the contract was done.

Q. I want to split those apart. When you say recognizing when the contract was done, the contract was done sometime in the very early '70's?

A. 1971.

Q. Prior to the release of Clockwork Orange?

A. Yes.

Q. Or in the general vicinity?

A. The contract was done before, yes.

Q. Based upon your knowledge of the movie industry, you formed a belief -- well, you formed a belief that home video rights would not have been licensed at this time?

A. I suspected that, yes.

Q. So you suspected that.

A. Yes.

Q. Then you said discussions with Ms. Carlos --

A. Yes.

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store?

A. Yes.

MR. COHN: Did they exist in 1977?

MS. BURROW: No, but shortly thereafter.

Q. And at no time prior to 1999 did you ever see a copy of Clockwork Orange on video?

MR. COHN: Objection to the form of the question. Did you ever view it or did you ever see it on sale?

Q. Were you ever aware of a copy of Clockwork Orange on video in any form prior to 1999?

A. I -- no. No -- I don't know. I don't know the answer to that. Who knows? I don't know the answer.

Q. But as of 1999 or 2000 when you first learned -- I am saying 1999; it could be 2000, I don't care.

A. Yes.

Q. You were aware that A Clockwork Orange had been released on video?

A. Yes.

Q. But at that time did you raise an issue

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2 with Warner Brothers with respect to whether
3 Ms. Carlos had -- whether Warner Brothers had
4 licensed the home video rights to Ms. Carlos'
5 music?

6 A. No.

7 Q. Why not?

8 A. Because Clockwork Orange didn't occur
9 to me at the time.

10 Q. When did it first occur to you?

11 A. When I wrote this letter.

12 Q. What happened in 2007 that caused you
13 to form a belief that Ms. Carlos' music had not
14 been licensed for home video?

15 A. It is because of the things I wrote
16 about in the second paragraph about being
17 licensed. It is the first time I thought about it
18 from a legal standpoint, and I am talking
19 specifically about Clockwork Orange, not anything
20 else.

21 Q. Right. That is what we are talking
22 about now, Clockwork Orange.

23 A. Right.

24 Q. If you look at the amended complaint, I
25 want to focus you on paragraph 7.

1 FRANKLIN

2 something that hadn't been used in the movie.

3 Q. Does the --

4 A. It was performed out of the computer
5 actually.

6 Q. Does the Orange Minuet --

7 A. I think that is one of the -- it is in
8 the complaint.

9 Q. She also played music that had been
10 composed for The Shining, correct?

11 A. She played music that was related to
12 The Shining, yes. Let's be careful about saying
13 what it was done for.

14 Q. What distinction are you drawing when
15 you say it is related to The Shining?

16 A. It is in the complaint.

17 Q. I am asking you. You corrected me and
18 I would like to know what you meant.

19 A. Well, it is because -- you know, what
20 is in the documentary speaks for itself but --
21 excuse me. It wasn't in the documentary; that is
22 the problem that got us here.

23 She did some music that had been part
24 of a demo tape that was done for The Shining.

25 Q. Just so I am clear, in the taping

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session with Mr. Harlan, Ms. Carlos played some music that had been part of the demo tape for The Shining? I am just making sure I understand your testimony.

A. Yes.

Q. I want to go back to, you said it wasn't in the documentary; that is the problem that got us here, or words to that effect.

MR. COHN: I don't think that is what she said. It was mumbled.

MS. BURROW: I can have it read back.

A. I will tell you what I meant. The second session didn't appear in the documentary.

Q. Why is that -- what did you mean when you said words to the effect of that is a problem?

A. Because it was used otherwise by Warner Brothers.

Q. That is Wendy Carlos Composer?

A. Yes.

Q. Staying on Life in Pictures for just a second, if you go to page 10 of your complaint, paragraph 36 B, you list a number of compositions that were composed, arranged or performed by Wendy Carlos for Clockwork Orange.

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A F T E R N O O N S E S S I O N

(Time noted: 2:25 p.m.)

THE VIDEOGRAPHER: This is tape number
3 of the videotaped deposition of Annemarie
Franklin. We are on the record at 2:25 p.m.
A N N E M A R I E F R A N K L I N, resumed and
testified as follows:

CONTINUED EXAMINATION

BY MS. BURROW:

Q. Welcome back, Ms. Franklin.

I think there is something you want to
clarify for the record.

MR. COHN: You asked the question at
some point about who signed contracts for
Serendip. Ms. Franklin made an answer which
in my view is two parts and which I believe
she clarified. We have had an off-the-record
discussion in which your recollection is not
the same as mine. So to that question, she
seeks clarification by redoing her answer.

MS. BURROW: All right.

Q. I will ask a couple of questions and
then we will make sure the record is clarified.

Who has authority to execute contracts

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2 on behalf of Serendip?

3 MR. COHN: What caused the confusion
4 is, do you mean as a matter of law --

5 MS. BURROW: No.

6 MR. COHN: Right. So now we get the
7 answer.

8 A. For Serendip, I make all the
9 agreements. For practical -- as a practical
10 matter, Wendy Carlos signs the agreements. One
11 reason for that is I am a lawyer, so it is better
12 for her to sign it, so either one of us could sign
13 the agreement. I, however, am the one who makes
14 all the agreements in the first place.

15 Q. But Ms. Carlos does sign agreements on
16 behalf of Serendip?

17 A. Yes.

18 Q. When was the last time you spoke to Jan
19 Harlan either personally or on the phone, not in
20 writing?

21 A. I don't think I ever spoke to him on
22 the phone. Personally, the last time we saw him,
23 five or six years probably. It is long after -- I
24 don't remember exactly when.

25 I definitely saw him in 2000. I have

1 FRANKLIN

2 Q. Did you ever see Life in Pictures on
3 HBO?

4 A. No.

5 Q. You didn't?

6 A. No.

7 Q. Do you know when it was released on HBO
8 or when it was shown on HBO?

9 MR. COHN: You mean initially? It has
10 been played more than once.

11 MS. BURROW: Yes.

12 Q. When Life in Pictures was initially
13 shown on HBO.

14 A. I don't know.

15 Q. Do you know when Life in Pictures was
16 originally released on home video?

17 A. I don't know.

18 Q. Do you know if it was in 2001?

19 A. I don't know.

20 Q. Do you know if it was prior to the 2007
21 box set of Stanley Kubrick director series?

22 A. I believe it was, yes, but that is just
23 from looking at information on Amazon which has
24 dates on it.

25 Q. So Mr. Harlan came to your home on two

1 FRANKLIN

2 occasions and videotaped Ms. Carlos for use in
3 Life in Pictures, correct?

4 A. Yes.

5 Q. When was the first time you saw Life in
6 Pictures as a finished product?

7 A. 2007.

8 Q. During the period from 2001 to 2007,
9 did you make any attempts to see a copy of Life in
10 Pictures?

11 A. No -- I may have seen the portion that
12 contained Wendy Carlos' appearance at some point,
13 but I don't remember when I first saw that.

14 I did not look at the whole picture
15 until, I think about 2007 or 2006. We are talking
16 about the time frame; sometime before this was
17 written, a year probably.

18 Q. Weren't you interested in the finished
19 product?

20 MR. COHN: Objection.

21 Don't answer that.

22 I move that it be stricken.

23 MS. BURROW: We will mark Exhibit 7
24 which is an e-mail dated November 18, 2006
25 from Wendy Carlos to Jan Harlan that was

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produced by the plaintiffs in this action and
is Bates numbered S 339 through S 343.

(Exhibit 7, Bates numbers S 339 through
S 343, marked for identification, as of this
date.)

Q. I want to focus your attention on the
paragraph at the bottom of the page that begins
eventually. The second sentence in that paragraph
begins, it may be that seeing your OLM newest
documentary triggered taking another look at
SK-ALIP again as we were so pressed for time when
it first was shown on HBO.

Do you see that?

A. Yes.

Q. Does that refresh your recollection as
to whether you ever saw it on HBO prior to 2006?

A. No.

Q. The next sentence says, I taped the
cable casts; have your VHS pre-released dubs too.

Do you see that?

A. Yes.

Q. Does that refresh your recollection as
to whether Ms. Carlos had a pre-released version
of Stanley Kubrick: A Life in Pictures?

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2 A. I already said I think she may have
3 seen some of it. Yes, I already said that.

4 Q. Back to the complaint -- actually, I
5 want to focus on page 12, paragraph 36 I.

6 Paragraph 36 I is a portion of your
7 copyright infringement claim relating to title
8 music from A Clockwork Orange and March From A
9 Clockwork Orange and it is used in Oh, Lucky
10 Malcolm without credit or proper listing in music
11 cue sheet and publicly exhibited at film festival
12 on behalf of Warner for an admission charge.

13 Do you see that?

14 A. Yes.

15 Q. You would agree that the version of Oh,
16 Lucky Malcolm that is on the 2007 is a -- as an
17 extra feature in the 2007 box set release does not
18 contain any of Ms. Carlos' music; is that correct?

19 A. That is correct.

20 Q. So this claim arises out of the
21 exhibition of Oh, Lucky Malcolm at a film
22 festival, correct?

23 A. Yes.

24 Q. You learned of this claim because you
25 got a pre-released version -- or Ms. Carlos was

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provided a pre-released version of Oh, Lucky Malcolm by Mr. Harlan, correct?

A. Yes.

Q. Do you know when Oh, Lucky Malcolm was exhibited at a film festival?

A. In my records I do. I don't have any my head.

MR. COHN: If you leave a space, we will be glad to include it.

INSERT: _____.

Q. Do you know if the exhibition at the film festival was before or after Ms. Carlos viewed a copy of Oh, Lucky Malcolm?

A. I don't remember.

Q. What harm has Serendip suffered as a result of the exhibition of Oh, Lucky Malcolm at a film festival?

A. We were deprived of revenue.

Q. How much revenue?

A. Whatever we chose to ask for.

Q. Do you know whether Ms. Carlos ever acquiesced to the exhibition of Oh, Lucky Malcolm at a film festival?

MR. COHN: The answer to that is a yes

1 FRANKLIN

2 between me and Jan Harlan, some of which dealt
3 with that question.

4 Q. Are you aware of a particular
5 conversation in which Ms. Carlos rescinded her
6 acquiescence into the showing of Oh, Lucky Malcolm
7 at Traverse City Film Festival?

8 A. Again, that question gives me -- I have
9 difficulty answering it because you're
10 characterizing her e-mail as something which I may
11 not agree with.

12 Q. How would you characterize the
13 statements in Exhibit 8 that we just read?

14 MR. COHN: The statements speak for
15 themselves. Don't characterize them.

16 If you know of some conversation in
17 which they were amended or explained, you may
18 do that. Your characterization of it is
19 irrelevant.

20 If you want a ruling on that later, we
21 can mark it.

22 MS. BURROW: That's okay. We will mark
23 as Exhibit 9, a document entitled composer
24 loan-out agreement dated January 25, 1980.

25 At the same time, I will mark as

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Exhibit 10, a one-page document also dated January 25, 1980 which is executed on behalf of Peregrinne and a long Dutch name and Trans-Electronic Music Productions, Inc. This copy was produced as WB 000028.

(Exhibit 9, document entitled composer loan-out agreement dated January 25, 1980, marked for identification, as of this date.)

(Exhibit 10, WB 000028, marked for identification, as of this date.)

Q. Have you seen the document marked as Exhibit 9 before?

A. Yes.

Q. When did you first see this document?

A. I don't know. I don't remember.

Q. This document is dated January 25, 1980, correct?

A. Yes.

Q. You testified earlier that you formed Serendip in 1980?

A. Yes.

Q. Was Serendip formed before or after January 25, 1980?

A. I don't remember.

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2 Q. But the contracting entity here is
3 TEMPI, correct?

4 A. Yes. There is no argument about that.

5 Q. Did you have any role in negotiating
6 the agreement that has been marked as Exhibit 9?

7 A. No.

8 Q. Did you discuss with Ms. Carlos at the
9 time anything about the agreement that is marked
10 as Exhibit 9?

11 A. At the time?

12 Q. Yes.

13 A. Which time?

14 Q. In 1980. On or before January 25,
15 1980.

16 A. On or before January 25, 1980,
17 absolutely not.

18 Q. Why are you so certain?

19 A. Well, because I had nothing to do with
20 negotiations or the formation of that contract.

21 Q. But you knew Ms. Carlos then?

22 A. Yes, I did.

23 Q. But you didn't discuss this agreement
24 with her?

25 MR. COHN: That is what she said.

FRANKLIN

MS. BURROW: I am just clarifying, Mr. Cohn.

MR. COHN: Well, the form is adversarial. She said she didn't. I don't know what needs clarification.

Q. I am actually going to ask for an answer.

A. I don't remember the question now.

Q. I was just confirming although you knew Ms. Carlos then, you didn't discuss this agreement with her at the time?

A. At what time, please?

Q. On or before January 25, 1980.

A. This agreement, no because I hadn't seen it before January 25, 1980.

Q. If I ask you the same set of questions with respect to Exhibit 10 -- you recognize Exhibit 10?

A. Yes.

Q. You have seen it before?

A. Yes.

Q. Did you have any role in negotiating Exhibit 10?

A. No.

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2 THE WITNESS: Would you read back the
3 previous question.

4 (Record read.)

5 A. In the making.

6 Q. The Valse Triste that is at issue in
7 this case is an arrangement of a work by Sibelius,
8 correct?

9 A. Yes.

10 Q. Did Ms. Carlos obtain a license to
11 arrange the Sibelius work?

12 A. No.

13 Q. Did TEMPI, to your knowledge, obtain a
14 license to arrange the Sibelius work?

15 A. No.

16 Q. Did Serendip ever obtain a license to
17 arrange the Sibelius work?

18 A. No.

19 Q. Did you at any time undertake an
20 investigation as to whether the Sibelius work was
21 still under copyright at the time that Valse
22 Triste was delivered to Mr. Kubrick?

23 A. Would you repeat the question?

24 Q. Certainly.

25 Sometime between 1978 and 1980,

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2 release, one of the video releases, of which there
3 had been multiple releases of Kubrick stuff.

4 You asked me what did I do after that?
5 That is not the only thing I did after that.

6 MS. BURROW: I will mark as Exhibit 11,
7 a document that appears to be an e-mail
8 exchange in July 1999 between Vivian Kubrick
9 and Wendy Carlos that was produced as S
10 0000203 through 205.

11 (Exhibit 11, S 0000203 through 205,
12 marked for identification, as of this date.)

13 Q. Do you recall seeing this e-mail
14 previously?

15 A. Yes. I am the one who produced these
16 for you.

17 Q. I really, actually just provided this
18 to you for purposes of setting the dates.

19 A. Right.

20 Q. I don't have any specific questions
21 about that e-mail at this time.

22 MS. BURROW: Exhibit 12 is an e-mail
23 exchange between Ms. Kubrick and Ms. Carlos
24 that appears to be from 2001.

25 (Exhibit 12, e-mail exchange between

FRANKLIN

Ms. Kubrick and Ms. Carlos from 2001, marked for identification, as of this date.)

A. Right.

Q. That was produced as S 366. Do you see that?

A. Yes.

Q. This was a less little than two years after the 1999 e-mail we just looked at?

A. Yes.

Q. In that e-mail, Ms. Carlos is requesting the original recording of the Valse Triste because the music at the end of her documentary is breaking up?

A. Yes.

Q. Did Ms. Carlos provide that music?

A. I believe she did.

MS. BURROW: I will give you what we will mark as Exhibit 13.

(Exhibit 13, S 000211 and 212, marked for identification, as of this date.)

MS. BURROW: Exhibit 13 is an e-mail dated February 15, 2001. It appears it is from Ms. Carlos to Ms. Kubrick. It was produced as S 000211 and 212.

1 FRANKLIN

2 Q. Did you ever discuss with Ms. Carlos --
3 I don't want a privileged conversation.

4 MR. COHN: Do me a small favor, since I
5 am sure your presumption is correct, but could
6 you ask if this is, in fact, from Wendy Carlos
7 to --

8 MS. BURROW: Sure.

9 MR. COHN: Just so the record is clear
10 and your presumption, while it is of great
11 value to me personally, I am not sure in the
12 courtroom it means much.

13 MS. BURROW: That is fine.

14 Q. Can you review this document and let me
15 know whether this is an e-mail from -- really an
16 e-mail exchange between Ms. Kubrick and
17 Ms. Carlos?

18 A. It appears to be, yes.

19 Q. In fact, the L/W on page 212 in the
20 middle of the page, do you know whether Ms. Carlos
21 concludes e-mails that way?

22 A. She sometimes does.

23 Q. Do you know why Ms. Carlos complied
24 with Ms. Kubrick's request to provide music for
25 her to incorporate into her documentary in 2001?

FRANKLIN

1
2 A. That is a question I can't answer the
3 way it is phrased.

4 Q. Ms. Carlos did comply with
5 Ms. Kubrick's request, did she not?

6 A. She provided a better version of the
7 music, yes.

8 Q. Nowhere in this document is there any
9 indication that there is a restriction on
10 Ms. Kubrick's ability to use that music in the
11 documentary, correct?

12 A. In this particular e-mail, there might
13 not be. I haven't read the e-mail, so I can't
14 tell you. The document speaks for itself.

15 Q. Ms. Carlos is a member of Serendip,
16 correct?

17 A. Yes, she is.

18 MS. BURROW: Exhibit 14 will be a
19 document Bates labeled S 000220.

20 (Exhibit 14, Bates S 000220, marked for
21 identification, as of this date.)

22 Q. Do you recognize this document?

23 A. Yes.

24 Q. In fact, did you write the portion at
25 the bottom of the page?

1 FRANKLIN

2 A. Yes.

3 Q. The portion at the bottom says, the
4 music credit for the music by Wendy Carlos used in
5 The Making of The Shining documentary should have
6 read something like this?

7 A. Yes.

8 Q. Then it provides a copyright notice,
9 correct?

10 A. Yes.

11 Q. Did you as of February 16, 2001 have
12 any understanding of where -- how the Making of
13 the Shining was to be distributed?

14 A. It is for purposes of video.

15 Q. You instructed Ms. Kubrick and Ned
16 Price to add this music credit to the documentary,
17 correct?

18 A. The e-mail is addressed to Vivian
19 Kubrick with a copy to Ned Price.

20 Q. In February of 2001, did you have an
21 understanding of who Ned Price was?

22 A. No.

23 Q. Where did you get Mr. Price's name?

24 A. I think it is from another e-mail.

25 Q. Why did you want this music credit at

1 FRANKLIN

2 Q. Do you know if Ms. Carlos had any
3 conversations about any specific pieces of music
4 with Mr. Kubrick prior to the delivery of that
5 demonstration tape?

6 A. There was one conversation that
7 involved music which influenced what was on the
8 demonstration tape.

9 Q. In fact, is it your understanding that
10 Valse Triste was mentioned expressly in that
11 conversation?

12 A. It was mentioned in the conversation.

13 Q. By Mr. Kubrick?

14 A. In response to a question from Rachel
15 Elkind and Wendy Carlos, yes.

16 Q. What do you understand that question to
17 be?

18 A. What are you listening to, Stanley?

19 Q. What else do you know about that
20 conversation?

21 A. Well, I wasn't present.

22 Q. Understood.

23 A. But the --

24 MR. COHN: Wait --

25 A. That is it.

1 FRANKLIN

2 The conversation they had with him was
3 totally unproductive because he didn't know what
4 he wanted and he told them to read the book and
5 they had already read the book. So they were left
6 with the book as the only guidance, Steven King's
7 novel.

8 At the end of the conversation, in
9 frustration, one of -- Ms. Carlos or Ms. Elkind,
10 probably Ms. Elkind, asked him, so Stanley, what
11 are you listening to; can you tell us that and he
12 said Sibelius' Valse Triste, and that then led
13 Wendy Carlos to do an arrangement of Valse Triste
14 that was included on the first demonstration tape
15 that was sent to Stanley Kubrick.

16 Q. Just for the record, it is Serendip's
17 position that Serendip owns the copyright in the
18 music on that demonstration tape?

19 A. Yes.

20 Q. And that Warner Brothers does not have
21 the rights to distribute the music on that
22 demonstration tape?

23 A. They do not.

24 MR. COHN: The music that was on the
25 demonstration tape. It is no longer -- they

1 FRANKLIN

2 A. Keith Zajic sent them to me.

3 Q. I want to turn to the complaint and you
4 look at the paragraph 37 on page 12.

5 You see where it says, Serendip
6 notified Warner prior to the release of the 2007
7 Stanley Kubrick, Warner home video director
8 series, home video set, as well as the release of
9 the individual titles contained in that set that
10 unlicensed use of Wendy Carlos' music therein
11 would infringe Serendip's copyright, but Warner
12 refused to cease its acts.

13 Do you see that?

14 A. I see that.

15 Q. Does that paragraph refer to your
16 September 24, 2000 letter that we marked earlier?

17 A. Yes --

18 MR. COHN: Clarification. Does it
19 refer to solely that letter?

20 MS. BURROW: That is the next question.

21 Q. Prior to your September 24, 2007
22 letter, did Serendip notify Warner that Serendip
23 believed that the 2007 box set or any of the
24 titles contained in that set would infringe
25 Serendip's copyrights?

1 FRANKLIN

2 A. That is the first time we sent a notice
3 to Warner Brothers.

4 Q. Paragraphs 41 and 42 in the
5 complaint -- actually through 43 contain
6 allegations relating to Ms. Carlos' agreement to
7 be videotaped for purposes of Life in Pictures,
8 correct?

9 A. Yes.

10 Q. The subsequent use of some of that
11 video in Wendy Carlos Composer?

12 A. That is correct.

13 Q. I want to be clear there is not a claim
14 in this lawsuit arising out of the use of
15 Ms. Carlos' interview in Life in Pictures,
16 correct?

17 A. No.

18 MR. COHN: Yes, that is correct?

19 Q. Yes, that is correct. No, there is not
20 an allegation.

21 A. What you just said, yes.

22 MR. COHN: Sorry.

23 MS. BURROW: I appreciate it.

24 THE VIDEOGRAPHER: We are now off the
25 record at 4:17 p.m.

A C K N O W L E D G M E N T

STATE OF)
) ss.:
COUNTY OF)

I, ANNEMARIE FRANKLIN, hereby
certify that I have read the transcript of my
testimony taken under oath in my deposition;
that the transcript is a true, complete and
correct record of my testimony, and that the
answers on the record as given by me are true
and correct.

ANNEMARIE FRANKLIN

Signed and subscribed to before
me, this day of ,
20__.

Notary Public, State of _____

C E R T I F I C A T E

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

I, BARBARA DRISCOLL, a Shorthand
Reporter and a Notary Public within and for the
State of New York, do hereby certify that the
foregoing deposition of ANNEMARIE FRANKLIN was
taken before me on the 16th day of September, 2009;

That the said witness was duly sworn
before the commencement of her testimony; that the
said testimony was taken stenographically by me and
then transcribed.

I further certify that I am not related
by blood or marriage to any of the parties to this
action or interested directly or indirectly in the
matter in controversy; nor am I in the employ of
any of the counsel in this action.

IN WITNESS WHEREOF, I have hereunto set
my hand this 29th day of September, 2009.

Barbara Driscoll

BARBARA DRISCOLL